

Notice of Allowability

Application No.

10/672,338

Examiner

Jerrold Johnson

Applicant(s)

RODRIGUEZ, DEBORAH T.

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview summary submitted herewith.
2. ☒ The allowed claim(s) is/are 31-55.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date submitted herewith.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brian Rayve on 20,27 November 2007.

The application has been amended as follows:

Claims 1-30 are cancelled.

New claims 31-55 are entered through this Examiner's amendment. Note that none of these claims includes the identifier "(new)", but all of these claims are new.

31. A hair roots coloring kit for mixing together standard hair coloring materials including containers of a plurality of different colored hair coloring compositions to form a matching color of hair coloring composition to a user's previously colored hair shafts and for applying to uncolored outgrown roots of the hair, comprising:
at least one measuring device adapted for measuring necessary quantities of the hair coloring materials to produce the matching color of hair coloring composition comprising a syringe having a hollow body adapted to closely receive a slidable plunger having a resilient

sealing piston, said body having a transparent tubular mid-section with a measuring indicia and an elongate tapered needle adapted to be closely received within necks of squeezable tubes to receive the hair coloring composition contained therein in the form of a paste therefrom upon squeezing of the tube, said body having a pair of finger engaging tabs and the piston having a thumb ring to facilitate withdrawal of said piston from said body as the hair coloring paste is squeezed from the tube into said syringe;

a mixing container adapted for holding the necessary quantities of the hair coloring materials;

a stirring device adapted for manual mixing together of the necessary quantities of the hair coloring materials within said container to produce the matching color of hair coloring composition;

an applicator device adapted for manually applying the matching color of hair coloring composition to the roots of the user's hair; and

a carrying device adapted for receiving said syringe, said stirring device, and said applicator device for storage and transport thereof.

32. The kit according to Claim 31, wherein the mixing container comprises a mixing bowl of a type chosen from the group consisting of reusable and disposable.

33. The kit according to Claim 32, wherein the mixing bowl is of the reusable type being made of a substantially rigid and cleanable material chosen from the group consisting of glass, ceramic, and plastic.

34. The kit according to Claim 32, wherein there are a plurality of mixing bowls which are disposable, being molded from a thin sheet material chosen from the group consisting of plastic, paper, and coated paper which are made to closely nest together.

35. The kit according to Claim 32, wherein there are a plurality of the mixing bowls which are disposable, being molded from a thin sheet material chosen from the group consisting of plastic, paper, and coated paper which are made to closely nest together.

36. The kit according to Claim 31, wherein the applicator device comprises an applicator brush having an elongate handle from which a plurality of bristles extend.

37. The kit according to Claim 36, wherein the handle of the applicator brush is longitudinally tapered, having a wide bristle receiving end from which the plurality of bristles longitudinally extend, and an opposite end adapted for manipulating hair of a type chosen from the group consisting of a pointed end and a curled end.

38. The kit according to Claim 37, wherein respective ends of the bristles are aligned relative to the handle in an orientation chosen from the group consisting of perpendicularly and angled.

39. The kit according to Claim 31, wherein the stirring device comprises a stirring stick of a type chosen from the group consisting of reusable and disposable.

40. The kit according to Claim 39, wherein the stirring stick is of the reusable type being made of a substantially rigid and cleanable material chosen from the group consisting of glass, plastic, and wood.

41. The kit according to Claim 39, wherein there are a plurality of stirring sticks which are disposable, being made of a material chosen from the group consisting of coated paper, plastic, and wood.

42. The kit according to Claim 31, wherein the carrying device comprises a drawstring bag.

43. The kit according to Claim 42, wherein the drawstring bag is of a sufficient size to also hold the hair coloring materials.

44. The kit according to Claim 31, further comprising an additional kit component chosen from the group consisting of a pair of protective gloves and a cleaning brush.

45. The kit according to Claim 44, wherein the additional kit component comprises a plurality of pairs of the protective gloves which are made of fused sheets of thin plastic so as to be disposable.

46. The kit according to Claim 45, wherein the gloves are pre-packaged in tearable packages to maintain said gloves in a compact folded condition prior to use.

47. The kit according to Claim 44, wherein the additional kit component comprises the cleaning brush having an elongate handle with a gripping portion and a cleaning portion to which a plurality of bristles radially extend.

48. A hair roots coloring kit for mixing together standard hair coloring materials including containers of a plurality of different colored hair coloring compositions to form a matching color of hair coloring composition to a user's previously colored hair shafts and for applying to uncolored outgrown roots of the hair, comprising:

at least one measuring device adapted for measuring necessary quantities of the hair coloring materials to produce the matching color of hair coloring composition comprising a syringe having a hollow body adapted to closely receive a slidable plunger having a resilient sealing piston, said body having a transparent tubular mid-section with a measuring indicia and an elongate tapered needle adapted to be closely received within necks of squeezable tubes to receive the hair coloring composition contained therein in the form of a paste therefrom upon squeezing of the tube;

a mixing container adapted for holding the necessary quantities of the hair coloring materials;

a stirring device adapted for manual mixing together of the necessary quantities of the hair coloring materials within said container to produce the matching color of hair coloring composition;

an applicator device adapted for manually applying the matching color of hair coloring composition to the roots of the user's hair; and

a bottle stopper which includes a longitudinally tapered, resilient body of circular cross-section and a recloseable cap, said body being adapted to closely fit within the necks of variously sized bottles and having a longitudinal bore which extends through said body, an externally opening portion of said bore being of such a size to closely receive the tapered needle of the syringe to receive the hair coloring composition contained therein in the form of a liquid upon inverting of the bottle, said cap being adapted to sealingly attach to said body to prevent the liquid from exiting the bottle through said bore; and

a carrying device adapted for receiving said measuring device, said stirring device, and said applicator device for storage and transport thereof.

49. The kit according to Claim 48, wherein the cap is disk-shaped and attached to the body by a connecting strap, the outer surface of the body is annularly stepped, and the cap has a dependent plug adapted to sealingly fit within the bore of said body to seal said bore such that liquid cannot exit therefrom.

50. A hair roots coloring kit for mixing together standard hair coloring materials including containers of a plurality of different colored hair coloring compositions to form a matching color of hair coloring composition to a user's previously colored hair shafts and for applying to uncolored outgrown roots of the hair, comprising:

at least one measuring device adapted for measuring desired quantities of the hair coloring compositions chosen from the group consisting a measuring cup, a syringe, and an eyedropper;

a mixing container adapted for holding the desired quantities of the hair coloring materials comprising a mixing bowl of a type chosen from the group consisting of reusable and disposable;

a stirring device adapted for manual mixing together of the desired quantities of the hair coloring materials within said container to produce the desired color hair of coloring composition;

an applicator device adapted for manually applying the desired color of hair coloring composition to the roots of the user's hair;

a bottle stopper which includes a longitudinally tapered, resilient body of circular cross-section and a recloseable cap, said body being adapted to closely fit within the necks of variously sized bottles and having a longitudinal bore which extends through said body, an externally opening portion of said bore being of such a size to closely receive the tapered needle of the syringe to receive the hair coloring composition contained therein in the form of a liquid upon inverting of the bottle, said cap being adapted to sealingly attach to said body to prevent the liquid from exiting the bottle through said bore; and

a carrying device adapted for receiving said measuring device, said stirring device, and said applicator device for storage and transport thereof.

51. The kit according to Claim 50, wherein the measuring device comprises a syringe having a hollow body adapted to closely receive a slidable plunger having a resilient sealing piston, said body having a transparent tubular mid-section with a measuring indicia and an elongate tapered needle adapted to be closely received within necks of squeezable tubes to receive the hair coloring composition contained therein in the form of a paste therefrom upon squeezing of the tube.

52. The kit according to Claim 51, wherein the body of the syringe includes a pair of finger engaging tabs and the plunger includes a thumb ring to facilitate withdrawal of said plunger from said body as the hair coloring paste is squeezed from the tube into said syringe.

53. The kit according to Claim 50, further comprising:
an additional kit component chosen from the group consisting of a pair of protective gloves and a cleaning brush; and
wherein the applicator device comprises an applicator brush having an elongate handle from which a plurality of bristles extend, the carrying device comprises a drawstring bag, and

the stirring device comprises a stirring stick of a type chosen from the group consisting of reusable and disposable.

54. The kit according to Claim 50, wherein the measuring device comprises a measuring cup having a circular bottom wall, an upstanding annular side wall with a measuring indicia, and a pouring spout.

55. The kit according to Claim 50, wherein the measuring device comprises an eyedropper having an elongate tubular body and a squeezable bulb.

The following is an examiner's statement of reasons for allowance:

Claims 31 is drawn to hair dyeing kit that includes a measuring device in the form of a syringe. As was stated in the previous office action, of all the hair dye patents uncovered in the search of the prior art just one mentioned a syringe, and that recitation was an incidental disclosure. Claim 31 includes limitations to a specific syringe structure having a thumb ring. It would not be remotely obvious to include this specific syringe structure in a hair dye kit when the prior art does not establish the use of any type of syringe other than in a single reference.

Claims 48 and 50 are drawn to hair dying kits that include a very specific bottle stopper configuration that was not uncovered in a general search of bottle stoppers, let alone in the search of hair dye kits. Even if an obscure reference were found showing a bottle stopper of this type, there would not be sufficient evidence to support that the use a bottle stopper of this type in a hair dye kit as claimed would be obvious.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDJ


Mickey Yu
Supervisory Patent Examiner
Group 3700